

BARNSTABLE Superior Court
NO. BACR 95-046579

Commonwealth,

v.

Amory G. SWELL, JR.,
Defendant.

SUPERIOR COURT BARNSTABLE, SS	
Filed	APR 04 2016
Scott W. Hickman Clerk	

DEFENDANT'S VERIFIED MOTION TO STRIKE ✓
UNTIMELY OPPOSITION TO M.G.L.C. 278A, SS 2-
12 POST-CONVICTION FORENSIC AND SCIENTIFIC
ANALYSIS, WHICH WILL UNASSAILABLY
BUTTRESS ACTUAL INNOCENCE.

DEFENDANT, FOR THE LAST TWENTY-ONE (21) YEARS,
HAS BEEN WRONGLY IMPRISONED AS AN ACTUAL
INNOCENT, AND HEREBY IN SUPPORT THEREOF MOVES
THIS MOST HONORABLE COURT TO STRIKE THE MOTION
OF THE COMMONWEALTH IN OPPOSITION AS UNTIMELY.

IT IS BEYOND DOUBT, THAT THE COURT (MUSE, J.)
ON 12-23-2015 DIRECTED THE COMMONWEALTH TO
FILE ITS OPPOSITION, IF ANY, WITHIN (30) DAYS. (P#192.1).

THEN ON 1-07-2016, JUDGE MUSE THROUGH A
PROCEDURAL ORDER, FURTHER ENLARGE TIME FOR THE
COMMONWEALTH TO REPLY, TO (60) DAYS. (P#193).

✓- THE COMMONWEALTH'S 24 MAR 2016 "POSTMARKED" PAPERS, FALSELY DATED
14 MAR 2016, FALLS FAR OUTSIDE THE COURT (RUFFO, J.) GRANTED 29 FEB. 2016 TIME TO
ENLARGE TO REPLY (P#194). THEREFORE, THIS 24 MAR 2016 PAPER, NOT RECEIVED
BY DEFENDANT UNTIL 26 MAR 2016, IS TIME BARRED BY "WAIVER," OR DEFENSIVE
LACHES. SEE, EXH "A."

MOREOVER, THE RECORD (ORIGINAL) DOCKET²
WHILE UNDERPINNING DEFENDANT'S CLAIM THAT
NOTWITHSTANDING SPECIFICALLY STYLED BERRY
DISCOVERY MOTIONS; THE COMMONWEALTH
INTENTIONALLY SELECTED EXCULPATORY MEDICAL/
SCIENTIFIC EVIDENCE. SEE, P##13,14.

EVEN THREE MOTIONS TO COMPEL, P##34,37
§47, DID NOT CAUSE THOSE "SCIENTIFIC PHYSICAL
EVIDENCE (P#13), OR "SCIENTIFIC WITNESSES" (P#14),"
EXCULPATORY MATERIALS TO BE DELIVERED TO THE
DEFENSE. SEE, NUCKOLS V. GIBSON, 233 F3d 1261
(10TH CIR 2000) (FAILURE TO DISCLOSE IMPEACHMENT
EVIDENCE THAT KEY POLICE [OCME ZANE] WITNESS, WHO
MAY HAVE PROMPTED ILLEGAL CONFESSION BY
COMMITTING EDWARDS³ VIOLATION, HAD FLUNKED POLYGRAPH
IN CONVERSATION WITH A THEFT INVESTIGATOR, HAD

2- EXB. "B"

3- EDWARDS V. ARIZ., 451 U.S. 477 (1981)

BEEN UNDER INVESTIGATION BY POLICE
DEPARTMENT FOR SLEEPING ON THE JOB,
AND THUS HAD MOTIVE TO EMBELLISH
DEFENDANT'S STATEMENT AND THEREBY
INGRATiate HIMSELF WITH POLICE DEPT,
AND HAD SOME INVOLVEMENT IN PROVIDING
MONEY TO FUND A HOMICIDE); UNITED STATES
V. MUSE, 708 F.2d 513 (10TH CIR. 1983) (PROSECUTOR
MUST PRODUCE BRADY MATERIAL IN PERSONNEL
FILES OF GOVERNMENT AGENCIES EVEN IF THEY
ARE IN POSSESSION OF ANOTHER AGENCY [OCME]);
UNITED STATES V. BROOKS, 966 F.2d 1500 (D.C. CIR.
1992) (PROSECUTOR MUST PRODUCE BRADY MATERIAL
THROUGH SEARCH OF PERSONNEL RECORDS OF
POLICE OFFICER / WITNESSES TO FULFILL BRADY⁴
OBLIGATION).

4/ - THE PROSECUTOR'S OFFICE HAS A DUTY TO ENSURE THAT ALL MATERIAL
INFORMATION IS DISCLOSED, BRADY HOLDS THAT "ANY DISCLOSURE OF
MATERIAL EVIDENCE VIOLATES DUE PROCESS" IRRESPECTIVE OF THE GOOD
FAITH OR BAD FAITH OF THE PROSECUTOR." ACCORD, GIULIO V. U.S.,
405 U.S. 150, 153 (1972). IN 2005, BRADY EXCULPATORY MEDICAL
EVIDENCE SUPPRESSED, DESPITE SPECIFIC BRADY DISCOVERY MOTIONS
BY DEFENDANT WAS "NEWLY DISCLOSED," AND RESULTING IN (S) EXPERT
ACADEMIC / BOARD CERTIFIED FORENSIC PATHOLOGIST FINDING A 'NATURAL
FATAL CARDIAC ARRYTHMIA,' AS TRUE CAUSE OF ELIZABETH SIBEL'S DEATH.
SEE, EXHIB. C-6.

DEFENDANT DENIED SUPPRESSED BRADY
MATERIAL IN HIS 1995 TRIAL; MOVED IN 2005,
FOR WRITTEN DISCOVERY OF ALL AUTOPSY MATERIALS
IN THE CUSTODY OF THE OFFICE OF THE CHIEF
MEDICAL EXAMINER (OCME).⁵✓

ON DEC. 16, 2005 SUPERIOR COURT JUSTICE
RICHARD CANNON GRANTED DEFENDANT'S WRITTEN
DISCOVERY, AND ORDERED THAT THE OCME OPEN
ALL ITS FILES TO THE DEFENDANT'S INSPECTION. HOWEVER,
JUDGE CANNON'S ORDER TO THE OCME, WHICH SHOULD
HAVE GIVEN DEFENDANT THE 1995 BRADY REQUESTED
SCIENTIFIC WITNESSES, E.G. MUSE, BROOKS, GIBSON, SUPERA,
WAS NOT COMPLIED WITH.

DURING 2006, DEFENDANT'S THEN COUNSEL
IRVING MARMER ENGAGED CHIEF OF PATHOLOGY,
DR. ED FRIEDLANDER. SEE, EX.B.C-2,3.

✓ EX.B.C

ON MARCH 26, 2012, DR. FRIEDLANDER
By AFFIDAVIT, CONCLUDES HIS EXPERT PATHOLOGY,
AND STATED: "... MY REVIEW OF THE GLASS SLIDES
AT ONCE REVEALED THAT THE TISSUES CAME FROM
MORE THAN ONE PERSON. THE SECTIONS OF LIVER
WERE OBVIOUSLY FROM TWO DIFFERENT PEOPLE, AND
ONE OF THE SECTIONS OF HEART, UNQUESTIONABLY,
CAME FROM A BABY." Id. at 913.

IN FACT, DR. FRIEDLANDER WAS SO SURPRISED
BY THE MULTIPLE DIFFERENT PEOPLES ANATOMICALS, ESPECIALLY,
THE BABY HEART/LIVER; INASMUCH AS, OCME ZANE TESTIFIED
THAT ELIZABETH SWALL WAS 'A HEALTHY 52 YR OLD,' THAT
A TRIP TO THE BORROW OCME WAS ARRANGED FOR
MICROSCOPIC EXAMINATION OF THOSE "ORIGINAL"
TISSUE SLIDES/PARAFFIN BLOCKS IN THE OCME'S
CUSTODY SINCE 1995.

WHEREUPON MICROSCOPIC EXAMINATION
USING OCME EQUIPMENT, DR. FRIEDLANDER CONFIRMED
HIS PRELIMINARY MULTIPLE DIFFERENT PEOPLES PRESENCE
FINDING, ON THE ORIGINAL ANATOMICAL MATTERS.

THE COMMONWEALTH CONCEDES THAT THEY
 LACK STANDING TO OPPOSE, IN THAT, PURSUANT TO
 C. 278A, et seq. TO DATE, JUDGE NOW ASSIGNED
 TO THE INSTANT MATTER BY REGIONAL
 ADMINISTRATIVE JUSTICE GARY NICKERSON (1/5/12, P#161),
 HAS MADE NO PRELIMINARY FINDING ON THE:
 (a) AFFIDAVIT OF DR. ED FRIEDLANDER; (b) ANALYSIS OF
 DR. THOMAS YOUNG; (c) REPORT OF OCME FORMER
 CHIEF OF STAFF DR. STANTON KESSLER; (d) AFFIDAVIT
 OF FORMER OCME PATHOLOGIST DR. GERALD FELMAN, OR
 (e) FORMER NEW YORK CITY MEDICAL EXAMINER DR.
 MICHAEL BADEN.⁶ ✓

MOREOVER, C. 278A, ss 3(b)(1)(2)(3)(4)(5), IS
 CLEARLY MET BY THE DEFENDANT, WHEREAS, THE
 FOLLOWING CRITERIA DEMONSTRATES SUCH:

(b)- THE MORON SHALL INCLUDE... AFFIDAVITS FILED IN
 SUPPORT (FRIEDLANDER, FELMAN, BADEN)... SIGNED
 BY A PERSON WITH PERSONAL KNOWLEDGE....

✓- SEE EXHIBITS C2, C3, D, E, F, G.

(b)(1) - NAME AND DESCRIPTION OF THE REQUESTED
[DNA] FORENSIC OR SCIENTIFIC ANALYSIS;

(2) - INFORMATION DEMONSTRATING THAT THE
REQUESTED ANALYSIS IS ADMISSIBLE AS EVIDENCE
[ALL FIVE EXPERT ACADEMIC/BOARD CERTIFIED FORENSIC
PATHOLOGISTS MICROSCOPICALLY EXAMINED ANATOMICAL;
BOTH SUPPLIED AND IN THE OCME'S CUSTODY SINCE
1995] [ARISING DIRECTLY OUT OF THE OCME ZANE
AUTOPSY OF ELIZABETH SWELL];

(3) - DESCRIPTION OF EVIDENCE/BIOLOGICAL MATERIAL
[TISSUE SLIDES/PARAFFIN BLOCKS IN THE OCME CUSTODY
SINCE 1995] THAT THE MOVING PARTY SEEKS TO HAVE
ANALYZED OR TESTED, INCLUDING ITS LOCATION [OCME]
AND CHAIN OF CUSTODY [OCME SINCE 1995] IF/KNOWN;

(4) - INFORMATION DEMONSTRATING THAT THE ANALYSIS
[UNAVAILABLE EVIDENCE OF BABY HEART/LIVER - ANALYZED
/NOT ANALYZED LIVERS] HAS THE POTENTIAL TO RESULT
IN EVIDENCE THAT IS [BRADY SUPPRESSED EXCULPATORY
1995 MEDICAL] MATERIAL;

(5)- INFORMATION DEMONSTRATING THAT THE EVIDENCE OF BIOLOGICAL MATERIAL HAS NOT BEEN SUBMITTED TO THE REQUESTED ANALYSIS BECAUSE:

(i) DUE TO PROSECUTOR/OCME'S INTENTIONAL SUPPRESSION OF BRADY EXCULPATORY MEDICAL/SCIENTIFIC PHYSICAL/ WITNESSES (P#13,14), DEFENDANT WAS BARRED SCIENTIFIC ANALYSIS OF THE 1995 THEN UNKNOWN; 2006 "NEWLY DISCOVERED" BABY HEART/LIVER; AUTOLYZED - NOW AUTOLYZED LIVERS;

(ii) HAD THE COMMONWEALTH NOT INTENTIONALLY SELECTED THAT SPECIFICALLY SOUGHT BRADY SCIENTIFIC PHYSICAL EVIDENCE (P#13), THE DEFENSE WOULD HAVE UTILIZED THE BABY HEART/LIVER, AUTOLYZED - NOW AUTOLYZED LIVER TO IMPROVE OCME ZANE'S "DIAGNOSIS OF EXCLUSION" "ASPHYXIA DUE TO SMOOTHERING" FATALITY FLAWED FINDING, WHICH IN FACT, CONSISTENT WITH THAT MEDICAL EVIDENCE, CAUSE OF ELIZABETH SULL'S DEATH WAS 'A NATURAL FATAL CARDIAC ARHYTHMIA';

(iii) NEITHER THE DEFENDANT, OR HIS THEN TRIAL COUNSEL IN 1995 WERE AWARE, PARTICULARLY DUE TO THE PROSECUTOR'S INTENTIONAL SELECTING OF THAT SPECIFICALLY REQUESTED BRADY MEDICAL EVIDENCE/WITNESSES, COULD NOT FORETELL THE EXISTENCE, INSTEAD AS, DIRECT RELIANCE OF TRUTHFULNESS WAS PLACED ON MICHAEL O'KEEFE'S BRADY DISCLOSURE OBLIGATIONS;

INDEED, FOR EXPRESS PURPOSES OF C. 278A, SS 2-12, THE DEFENDANT'S FIRST KNOWLEDGE OF THE MULTIPLE DIFFERENT PEOPLES ANATOMICAL MATERIALS WAS NOT "NEWLY DISCOVERED" UNTIL AFTER THE GRANTING BY JUDGE CANNON OF HIS WRITTEN DISCLOSURE OF ALL AUTOPSY MATERIALS

IN THE CUSTODY OF THE OCME UNDER THEIR
CONTINUED RELIANCE OF BADE'S FATAALLY FLAWED
AUTOPSY, FROM 1995.

PRIMA FACIE PROOF RELIED EXCLUSIVELY ON
BY THE DEFENDANT, RESTS ON AFFIDAVITS, ANALYSIS
AND REPORTS OF FIVE PATHOLOGY EXPERTS, EACH
HAVING MICROSCOPICALLY REVIEWED "RE-CUTS"
SUPPLIED FROM PARAFFIN BLOCKS IN THE CUSTODY OF
THE OCME SINCE 1995.

IN SUM, DESPITE THE COMMONWEALTH'S LATE
FRAUD ON THE COURT, BY THEIR UNTIMELY FRIENDLY
G.L.C. 231, 6F DECEITFUL REPRESENTATION, THAT
BLATANTLY ABUSE THIS COURT'S INHERENT POWERS,
ESPECIALLY INsofar AS, THE DEFENDANT EXCEEDS THE
EXPECTATIONS/REQUIREMENTS OF c. 278A, ss 3 et seq,
THIS COURT MUST STRIKE BOTH THIS DINING ROOM
FALSE OPPOSITION, AS WELL AS, THAT COMMONWEALTH
OPPOSITION OF 3 MAR 2016, NOT RECEIVED BY THE
DEFENDANT UNTIL 19 MAR 2016.

ON MARCH 19, 2016, DEFENDANT COMMUNICATED WITH THE COURT BY LETTER,
COMPLAINING, AGAIN, THAT ADA SWEENEY, DESPITE (2) ENLARGEMENT OF TIMES
(PH# 193, 194) FAILED TO OPPOSE IN THE TIMELY SOUGHT (PH# 194) ENLARGEMENT
UP TO AND ON 29 FEB 2016, AS ORDERED (PH# 193) BY JUDGE MUE. HOWEVER,
PAST THAT REQUESTED 29 FEB 2016, ENLARGEMENT, THE COMMONWEALTH BY
FRAUD, MISREPRESENTATION, DECEIT, AND DISHONESTY, FILED OPPOSITION TO
DEFENDANT'S MOTION TO COMPEL IT ON 14 MARCH 2016, YET AS EVIDENCED BY THE
POSTMARK, DID NOT NOTICE DEFENDANT UNTIL 26 MAR 2016, NEARLY (2) WEEKS
LATER, FOR SUCH FRAUD, THE COURT MUST STRIKE BOTH COMMONWEALTH
OPPOSITION AS UNTIMELY, AND AS SUCH, "WAIVED." SEE, EXH. "I."

Conclusion

WHEREFORE, DEFENDANT AT BAR HAS NO ADEQUATE
REMEDY AT LAW, THIS MOST HONORABLE COURT MUST
GRANT THE FOLLOWING RELIEF:

A- STRIKE AS UNTIMELY COMMONWEALTH'S OPPOSITION
OF ALLEGOEDLY 3 MAR 2016, AS PAST THE (30) DAY ENLARGEMENT
PERMITTED BY JUDGE RUFO;

B- STRIKE AS SEVERELY UNTIMELY COMMONWEALTH'S
OPPOSITION ALLEGOEDLY OF 14 MAR 2016, NOT RECEIVED BY THE
DEFENDANT UNTIL 26 MAR 2016;

C- GRANT DEFENDANT DNA TESTING ON THE (18) TISSUE
SLIDES / PARAFFIN BLOCKS IN THE CUSTODY OF THE OCME SINCE
1995;

D- GRANT DNA TESTING OF THE PILLOW, BEDDING, AND
CLOTHING OF ELIZABETH SWELL, PARTICULAR, OR DIRECTLY
ADJACENT TO EACH OF THOSE (17) CUTS, SCRATCHES OR LACERATIONS,
TO SPECIFICALLY DETERMINE IF IN FACT, ANY WERE PRESENT AT
TIME OF DEATH;

E- GRANT STAND BY COUNSEL TO DEPOSE EXPERT METEOROLOGIST ROBERT E. LAUTZENHEIMER, WHOSE "NEWLY DISCOVERED" EVIDENCE UNASSAILABLY SHOWS THAT A "NOV" EASTER" WAS ENVELOPING THE ENTIRE CAPE & ISLANDS ON MARCH 17, 1995 AT 0630 A.M.;

F- GRANT THE TESTING OF THE PRIMATIVE MINT / BROOKS BRAXODILATOR FOUND AT THE SCENE, AND IN THE STATE'S CUSTODY SINCE 1995;

G- GRANT ANY OTHER LAWFUL REMEDIES TO ENSURE JUSTICE IS DONE.

SIGNED, THIS 26TH DAY OF MARCH 2016 UNDER PAIN AND PENALTIES OF PERJURY.

Respectfully submitted,
by, THE DEFENDANT,



EMORY G. SWELL, JR., PRO SE
965 ELM ST.
CONCORD, MA. 01742-2119

Proof of Service

I, CERTIFY THAT ON THE 28TH OF MARCH 2016, A TRUE COPY OF THE ATTACHED WAS SERVED ON ELIZABETH SWELL, JR., BX 455, BARNSTABLE, MA. 02630 IN ACCORD W/103CMR 2481.10 (2d part),

I,
PERSONAL
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